

SENATE BILL NO. 492

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

1661S.02I

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 385, RSMo, by adding thereto fifteen new sections relating to motor vehicle financial protection products, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 385, RSMo, is amended by adding thereto
2 fifteen new sections, to be known as sections 385.600, 385.605,
3 385.610, 385.615, 385.620, 385.625, 385.630, 385.635, 385.640,
4 385.645, 385.650, 385.655, 385.660, 385.665, and 385.670, to
5 read as follows:

**385.600. For purposes of sections 385.600 to 385.670,
2 the following terms mean:**

3 (1) "Commercial transaction", a transaction involving
4 a motor vehicle in which the motor vehicle will primarily be
5 used for business purposes rather than personal purposes;

6 (2) "Consumer", an individual purchaser of a motor
7 vehicle or borrower under a finance agreement. The term
8 "consumer" includes any borrower, as defined in section
9 385.610, or contract holder, as defined in section 385.640,
10 as applicable;

11 (3) "Finance agreement", a loan, retail installment
12 sales contract, or lease for the purchase, refinancing, or
13 lease of a motor vehicle;

14 (4) "Free-look period", a period of time from the
15 effective date of the motor vehicle financial protection
16 product until the date the motor vehicle financial

17 protection product may be cancelled without penalty, fees,
18 or costs. This period of time shall not be shorter than
19 thirty days;

20 (5) "Insurer", an insurance company licensed,
21 registered, or otherwise authorized to issue contractual
22 liability insurance under the insurance laws of this state;

23 (6) "Motor vehicle", any self-propelled or towed
24 vehicle designed for personal or commercial use including,
25 but not limited to, automobiles, trucks, motorcycles,
26 recreational vehicles, all-terrain vehicles, snowmobiles,
27 campers, boats, personal watercraft, and related trailers;

28 (7) "Motor vehicle financial protection product", an
29 agreement that protects a consumer's financial interest in
30 his or her current or future motor vehicle. The term "motor
31 vehicle financial protection product" includes any debt
32 waiver, as defined in section 385.610, and any vehicle value
33 protection agreement, as defined in section 385.640;

34 (8) "Person", an individual, company, association,
35 organization, partnership, business trust, or corporation,
36 and every form of legal entity.

385.605. 1. Motor vehicle financial protection
2 products may be offered, sold, or given to consumers in this
3 state in compliance with sections 385.600 to 385.670.

4 2. Notwithstanding any other provision of law, any
5 amount charged or financed for a motor vehicle financial
6 protection product is an authorized charge that shall be
7 separately stated and shall not be considered a finance
8 charge or interest.

9 3. Any extension of credit, terms of credit, or terms
10 of the related motor vehicle sale or lease shall not be
11 conditioned upon the consumer's payment for or financing of
12 any charge for a motor vehicle financial protection product,

13 except that motor vehicle financial protection products may
14 be discounted or given at no charge in connection with the
15 purchase of other noncredit-related goods or services.

16 4. Motor vehicle financial protection products shall
17 not be subject to the requirements of section 408.380.

385.610. For purposes of sections 385.610 to 385.635,
2 the following terms mean:

3 (1) "Administrator", any person, other than an insurer
4 or creditor, who performs administrative or operational
5 functions for debt waiver programs;

6 (2) "Borrower", a debtor or retail buyer or lessee
7 under a finance agreement;

8 (3) "Creditor":

9 (a) The lender in a loan or credit transaction;

10 (b) The lessor in a lease transaction;

11 (c) Any retail seller of motor vehicles;

12 (d) The seller in commercial retail installment
13 transactions; or

14 (e) The assignee of any person described in paragraph
15 (a) to (d) of this subdivision to whom the credit obligation
16 is payable;

17 (4) "Debt waiver", any guaranteed asset protection
18 waiver, excess wear and use waiver, or other product as
19 approved by the department of commerce and insurance;

20 (5) "Excess wear and use waiver", a contractual
21 agreement in which a creditor agrees, with or without a
22 separate charge, to cancel or waive all or part of amounts
23 that may become due under a borrower's lease agreement as a
24 result of excessive wear and use of a motor vehicle, which
25 agreement shall be part of, or a separate addendum to, the
26 lease agreement. Excess wear and use waivers may also
27 cancel or waive amounts due for excess mileage;

28 (6) "Guaranteed asset protection waiver", a
29 contractual agreement in which a creditor agrees, with or
30 without a separate charge, to cancel or waive all or part of
31 amounts due on a borrower's finance agreement in the event
32 of a total physical damage loss or unrecovered theft of the
33 motor vehicle, which agreement shall be part of, or a
34 separate addendum to, the finance agreement. A guaranteed
35 asset protection waiver may also provide, with or without a
36 separate charge, a benefit that waives an amount, or
37 provides a borrower with a credit, toward the purchase of a
38 replacement motor vehicle.

 385.615. 1. (1) A retail seller shall insure its
2 debt waiver obligations under a contractual liability or
3 other insurance policy issued by an insurer. A creditor,
4 other than a retail seller, may insure its debt waiver
5 obligations under a contractual liability policy or other
6 such policy issued by an insurer. Any such insurance policy
7 may be directly obtained by a creditor or retail seller or
8 may be procured by an administrator to cover a creditor's or
9 retail seller's obligations.

10 (2) Notwithstanding the provisions of subdivision (1)
11 of this subsection, retail sellers who are lessors on motor
12 vehicles shall not be required to insure obligations related
13 to debt waivers on such leased motor vehicles.

14 2. The debt waiver remains a part of the finance
15 agreement upon the assignment, sale, or transfer of such
16 finance agreement by the creditor.

17 3. Any creditor who offers a debt waiver shall report
18 the sale of, and forward funds due to, the designated party
19 or parties.

20 4. Funds received or held by a creditor or
21 administrator and belonging to an insurer, creditor, or

22 administrator shall be held by such creditor or
23 administrator in a fiduciary capacity.

385.620. 1. Contractual liability or other insurance
2 policies insuring debt waivers shall state the obligation of
3 the insurer to reimburse or pay to the creditor any sums the
4 creditor is legally obligated to waive under a debt waiver.

5 2. Coverage under a contractual liability or other
6 insurance policy insuring a debt waiver shall also cover any
7 subsequent assignee upon the assignment, sale, or transfer
8 of the finance agreement.

9 3. Coverage under a contractual liability or other
10 insurance policy insuring a debt waiver shall remain in
11 effect unless cancelled or terminated in compliance with
12 applicable insurance laws of this state.

13 4. The cancellation or termination of a contractual
14 liability or other insurance policy shall not reduce the
15 insurer's responsibility for debt waivers issued by the
16 creditor before the date of cancellation or termination and
17 for which premium has been received by the insurer.

385.625. Debt waivers shall disclose in writing and in
2 clear, understandable language that is easy to read the
3 following:

4 (1) The name and address of the initial creditor and
5 the borrower at the time of sale, and the identity of any
6 administrator if different from the creditor;

7 (2) The purchase price, if any, and the terms of the
8 debt waiver including, but not limited to, the requirements
9 for protection, conditions, or exclusions associated with
10 the debt waiver;

11 (3) A statement that the borrower may cancel the debt
12 waiver within a free-look period as specified in the debt
13 waiver and, if so cancelled, shall be entitled to a full

14 refund of the purchase price paid by the borrower, if any,
15 so long as no benefits have been provided;

16 (4) The procedure the borrower is required to follow,
17 if any, to obtain debt waiver benefits under the terms and
18 conditions of the debt waiver, including, if applicable, a
19 telephone number or website and address where the borrower
20 may apply for debt waiver benefits;

21 (5) A statement that indicates whether the debt waiver
22 may be cancelled after the free-look period and the
23 conditions under which it may be cancelled or terminated,
24 including the procedures for requesting any refund of
25 amounts paid;

26 (6) A statement that in order to receive any refund
27 due in the event of a borrower's cancellation of the debt
28 waiver, the borrower, in accordance with the terms of the
29 debt waiver, shall provide a written request to cancel to
30 the creditor, administrator, or other such party. If the
31 cancellation of a debt waiver is due to the early
32 termination of the finance agreement and no benefit has been
33 or will be provided, the borrower, in accordance with the
34 terms of the debt waiver, shall provide a written request to
35 cancel to the creditor or administrator within ninety days
36 of the occurrence of the event terminating the finance
37 agreement;

38 (7) The methodology for calculating any refund of the
39 unearned purchase price of the debt waiver, if any, that
40 will be due in the event of cancellation of the debt waiver
41 or early termination of the finance agreement; and

42 (8) A statement that any extension of credit, terms of
43 the credit, or terms of the related motor vehicle sale or
44 lease shall not be conditioned upon the borrower's purchase
45 of a debt waiver.

385.630. 1. Debt waiver agreements may be cancellable
2 or noncancellable after the free-look period. Debt waivers
3 shall provide that if a borrower cancels a debt waiver
4 within the free-look period, the borrower shall be entitled
5 to a full refund of the amount the borrower paid, if any, so
6 long as no benefits have been provided.

7 2. If, after the debt waiver has been in effect beyond
8 the free-look period, the borrower cancels the debt waiver
9 or there is an early termination of the finance agreement,
10 the borrower may be entitled to a refund of the amount the
11 borrower paid of the unearned portion of the purchase price,
12 if any, less a cancellation fee up to seventy-five dollars,
13 if no benefit has been or will be provided. In order to
14 receive any refund due in the event of a borrower's
15 cancellation of the debt waiver, the borrower shall provide
16 a written request to cancel, in accordance with the terms of
17 the debt waiver, to the creditor or administrator. If the
18 cancellation is due to the early termination of the finance
19 agreement, the borrower, in accordance with the terms of the
20 debt waiver, shall provide a written request to cancel to
21 the creditor or administrator within ninety days of the
22 occurrence of the event terminating the finance agreement.

23 3. If the cancellation of a debt waiver occurs as a
24 result of a default under the finance agreement, the
25 repossession of the motor vehicle associated with the
26 finance agreement, or any other termination of the finance
27 agreement, any refund due may be paid directly to the
28 creditor or administrator and applied as a reduction of the
29 amount owed under the finance agreement unless the borrower
30 can show that the finance agreement has been paid in full.

385.635. 1. Debt waivers offered by state or federal
2 banks or credit unions in compliance with applicable state

3 or federal law shall be exempt from the provisions of
4 sections 385.600 to 385.670.

5 2. The provisions of sections 385.625 and 385.660
6 shall not apply to debt waivers offered in connection with
7 commercial transactions.

385.640. For purposes of sections 385.640 to 385.655,
2 the following terms mean:

3 (1) "Administrator", any person who is responsible for
4 the administrative or operational functions of vehicle value
5 protection agreements including, but not limited to, the
6 adjudication of claims or benefit requests by contract
7 holders;

8 (2) "Contract holder", a person who is the purchaser
9 or holder of a vehicle value protection agreement;

10 (3) "Provider", a person who is obligated to provide a
11 benefit under a vehicle value protection agreement. A
12 provider may perform as an administrator or retain the
13 services of a third-party administrator;

14 (4) "Vehicle value protection agreement", a
15 contractual agreement that:

16 (a) Provides a benefit toward the reduction of some or
17 all of the contract holder's current finance agreement
18 deficiency balance or toward the purchase or lease of a
19 replacement motor vehicle or motor vehicle services upon the
20 occurrence of an adverse event to the motor vehicle
21 including, but not limited to, loss, theft, damage,
22 obsolescence, diminished value, or depreciation;

23 (b) Does not include debt waivers; and

24 (c) May include agreements such as, but not limited
25 to, trade-in-credit agreements, diminished value agreements,
26 depreciation benefit agreements, or other similarly named
27 agreements.

385.645. 1. A provider may, but is not required to, use an administrator or other designee to be responsible for any and all of the administration of vehicle value protection agreements in compliance with the provisions of sections 385.600 to 385.670.

2. Vehicle value protection agreements shall not be sold unless the contract holder has been or will be provided access to a copy of the vehicle value protection agreement.

3. In order to assure the faithful performance of the provider's obligations to its contract holders, each provider shall comply with subdivision (1), (2), or (3) of this subsection, as follows:

(1) In order to satisfy the requirements of this subsection under this subdivision, the provider shall insure all its vehicle value protection agreements under an insurance policy that pays or reimburses in the event the provider fails to perform its obligations under the vehicle value protection agreement and that is issued by an insurer who is licensed, registered, or otherwise authorized to do business in this state and who:

(a) At the time the insurer's policy is filed with the director of the department of commerce and insurance and continuously thereafter:

a. Maintains surplus as to policyholders and paid-in capital of at least fifteen million dollars; and

b. Annually files copies of the insurer's financial statements, its annual statement to the National Association of Insurance Commissioners, and the actuarial certification required by and filed in the insurer's state of domicile; or

(b) At the time the insurer's policy is filed with the director of the department of commerce and insurance and continuously thereafter:

33 a. Maintains surplus as to policyholders and paid-in
34 capital of less than fifteen million dollars but at least
35 equal to ten million dollars;

36 b. Demonstrates to the satisfaction of the director of
37 the department of commerce and insurance that the company
38 maintains a ratio of net written premiums, wherever written,
39 to surplus as to policyholders and paid-in capital of not
40 greater than three to one; and

41 c. Annually files copies of the insurer's audited
42 financial statements, its annual statement to the National
43 Association of Insurance Commissioners, and the actuarial
44 certification required by and filed in the insurer's state
45 of domicile;

46 (2) In order to satisfy the requirements of this
47 subsection under this subdivision, the provider shall:

48 (a) Maintain a funded reserve account for its
49 obligations under its contracts issued and outstanding in
50 this state. The reserves shall not be less than forty
51 percent of gross consideration received, less claims paid,
52 on the sale of the vehicle value protection agreements for
53 all in-force contracts. The reserve account shall be
54 subject to examination and review by the director of the
55 department of commerce and insurance; and

56 (b) Place in trust with the director of the department
57 of commerce and insurance a financial security deposit,
58 having a value of not less than five percent of the gross
59 consideration received, less claims paid, on the sale of the
60 vehicle value protection agreements for all vehicle value
61 protection agreements issued and in force, but not less than
62 twenty-five thousand dollars, consisting of one of the
63 following:

64 a. A surety bond issued by an authorized surety;

65 b. Securities of the type eligible for deposit by
66 authorized insurers in this state;

67 c. Cash;

68 d. A letter of credit issued by a qualified financial
69 institution; or

70 e. Another form of security prescribed by regulations
71 issued by the director of the department of commerce and
72 insurance. Any rule or portion of a rule, as that term is
73 defined in section 536.010, that is created under the
74 authority delegated in this section shall become effective
75 only if it complies with and is subject to all of the
76 provisions of chapter 536 and, if applicable, section
77 536.028. This section and chapter 536 are nonseverable and
78 if any of the powers vested with the general assembly
79 pursuant to chapter 536 to review, to delay the effective
80 date, or to disapprove and annul a rule are subsequently
81 held unconstitutional, then the grant of rulemaking
82 authority and any rule proposed or adopted after August 28,
83 2023, shall be invalid and void; or

84 (3) In order to satisfy the requirements of this
85 subsection under this subdivision, the provider shall:

86 (a) Maintain, or together with its parent company
87 maintain, a net worth or stockholders' equity of one hundred
88 million dollars; and

89 (b) Upon request, provide the director of the
90 department of commerce and insurance with a copy of the
91 provider's or the provider's parent company's most recent
92 Form 10-K or Form 20-F filed with the Securities and
93 Exchange Commission (SEC) within the last calendar year or,
94 if the company does not file with the SEC, a copy of the
95 company's audited financial statements, which show a net
96 worth of the provider or its parent company of at least one

97 hundred million dollars. If the provider's parent company's
98 Form 10-K, Form 20-F, or financial statements are filed to
99 meet the provider's financial security requirement, the
100 parent company shall agree to guarantee the obligations of
101 the provider relating to vehicle value protection agreements
102 sold by the provider in this state.

103 4. Except for the requirements specified in subsection
104 3 of this section, no other financial security requirements
105 shall be required for vehicle value protection agreement
106 providers.

385.650. Vehicle value protection agreements shall
2 disclose in writing and in clear, understandable language
3 that is easy to read the following:

4 (1) The name and address of the provider, contract
5 holder, and administrator, if any;

6 (2) The terms of the vehicle value protection
7 agreement including, but not limited to, the purchase price
8 to be paid by the contract holder, if any, the requirements
9 for eligibility, the conditions of coverage, and any
10 exclusions;

11 (3) A statement that the vehicle value protection
12 agreement may be cancelled by the contract holder within a
13 free-look period as specified in the vehicle value
14 protection agreement and that in such event the contract
15 holder shall be entitled to a full refund of the purchase
16 price paid by the contract holder, if any, so long as no
17 benefits have been provided;

18 (4) The procedure the contract holder shall follow, if
19 any, to obtain a benefit under the terms and conditions of
20 the vehicle value protection agreement, including, if
21 applicable, a telephone number or website and address where
22 the contract holder may apply for a benefit;

23 (5) A statement that indicates whether the vehicle
24 value protection agreement may be cancelled after the free-
25 look period and the conditions under which it may be
26 cancelled, including the procedures for requesting any
27 refund of the unearned purchase price paid by the contract
28 holder;

29 (6) The methodology for calculating any refund of the
30 unearned purchase price of the vehicle value protection
31 agreement due if there is a cancellation;

32 (7) A statement that any extension of credit, terms of
33 the credit, or terms of the related motor vehicle sale or
34 lease shall not be conditioned upon the purchase of the
35 vehicle value protection agreement; and

36 (8) The terms, restrictions, or conditions governing
37 cancellation of the vehicle value protection agreement
38 before the termination or expiration date of the vehicle
39 value protection agreement by either the provider or the
40 contract holder. The provider of the vehicle value
41 protection agreement shall mail a written notice to the
42 contract holder at the last known address of the contract
43 holder contained in the records of the provider at least
44 five days before cancellation by the provider. Prior notice
45 shall not be required if the reason for cancellation is
46 nonpayment of the provider fee, a material misrepresentation
47 by the contract holder to the provider or administrator, or
48 a substantial breach of duties by the contract holder
49 relating to the covered product or its use. The notice
50 shall state the effective date of the cancellation and the
51 reason for the cancellation. If a vehicle value protection
52 agreement is cancelled by the provider for a reason other
53 than nonpayment of the provider fee, the provider shall
54 refund to the contract holder one hundred percent of the

55 unearned pro rata provider fee paid by the contract holder,
56 if any. If coverage under the vehicle value protection
57 agreement continues after a claim, any refund may deduct
58 claims paid. A reasonable administrative fee may be charged
59 by the provider up to seventy-five dollars.

385.655. The provisions of sections 385.650 and
2 385.660 shall not apply to vehicle value protection
3 agreements offered in connection with a commercial
4 transaction.

385.660. The director of the department of commerce
2 and insurance may take action that is necessary or
3 appropriate to enforce the provisions of sections 385.600 to
4 385.670 and to protect motor vehicle financial protection
5 product consumers in this state. After proper notice and
6 opportunity for hearing, the director of the department of
7 commerce and insurance may:

8 (1) Order the creditor, provider, administrator, or
9 any other person not in compliance with the provisions of
10 sections 385.600 to 385.670 to cease and desist from product-
11 related operations that are in violation of the provisions
12 of sections 385.600 to 385.670; and

13 (2) Impose a penalty of not more than five hundred
14 dollars for each violation of the provisions of sections
15 385.600 to 385.670 and not more than ten thousand dollars in
16 the aggregate for all violations of a similar nature. A
17 violation shall be considered of a similar nature to another
18 violation if the violation consists of the same or similar
19 course of conduct, action, or practice, irrespective of the
20 number of times the action, conduct, or practice that is
21 determined to be a violation of the provisions of sections
22 385.600 to 385.670 occurred.

385.665. Notwithstanding the provisions of section
2 385.670, all motor vehicle financial protection products
3 issued before and after August 28, 2023, shall not be
4 considered insurance.

385.670. The provisions of sections 385.600 to 385.670
2 shall apply to all motor vehicle financial protection
3 products that become effective after February 23, 2024.

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